

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL MULLINS,

Defendant-Appellant.

UNPUBLISHED

June 1, 1999

No. 206938

Oakland Circuit Court

LC No. 82-054846 FY

Before: Griffin, P.J., and Cavanagh and Fitzgerald, JJ.

MEMORANDUM.

In 1982, defendant pleaded guilty to breaking and entering with intent to commit larceny, MCL 750.110; MSA 28.305, and habitual offender, third offense, MCL 769.11; MSA 28.1083, for which he was sentenced to three to thirty years' imprisonment. In a prior appeal by delayed leave granted, this Court remanded the case for resentencing, based upon the trial court's failure to prepare and consider a presentence investigation report prior to sentencing. *People v Mullins*, unpublished memorandum opinion of the Court of Appeals, decided April 1, 1997 (Docket No. 186261), modified 455 Mich 861 (1997). On remand, the trial court again sentenced defendant to three to thirty years' imprisonment, with credit for time already served. Defendant now appeals by right, and we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant contends that he was originally sentenced to three to fifteen years' imprisonment on the underlying breaking and entering conviction, and that his double jeopardy rights against multiple punishment were violated when the trial court additionally sentenced him to three to thirty years' imprisonment as an habitual offender without vacating the sentence imposed on the underlying felony first. Defendant's argument is unsupported by the judgment of sentence in the record, which indicates no sentence in addition to the single prison term of three to thirty years. It is the judgment of sentence that is controlling, not the trial court's oral pronouncements at sentencing. See, e.g., *People v Collier*, 105 Mich App 46, 52; 306 NW2d 387 (1981).

The trial court granted defendant's requests for deletions and corrections in the presentence report information at the resentencing hearing. To the extent that defendant now seeks additional changes in the corrected sentencing materials, defendant's arguments are not properly before this Court

at this time, since defendant has not yet sought relief below. See MCR 6.429(C). Likewise, defendant's challenge to other records used by the Department of Corrections, unrelated to the resentencing proceedings in this case, is beyond the scope of this appeal. See *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975). Finally, the habitual offender notice arguments raised in the supplemental appeal brief filed by defendant in propria persona have already been decided against him on appeal. See *People v Mullins*, 455 Mich 861 (1997).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald